



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO. 13 OF 2013

IN THE MATTER OF THE CHILDREN'S ACT, 2001

AND

IN THE MATTER OF ADOPTION OF BABY B K

(A CHILD)

BY

J K

A M.....JOINT APPLICANTS

R U L I N G

1. **Baby B** (child) was placed with prospective adoptive parents, the applicants herein, **Mr. J K** and **Mrs. A M K** on foster care pending adoption, on the 5<sup>th</sup> day of **December, 2006**.

2. Investigations were carried out by the **Child Welfare Society of Kenya** (CWSK) which approved the applicants as suitable persons to adopt the child. Thereafter, in the **year 2009** investigations carried out by **Child Welfare Society of Kenya** revealed that the child lived in harsh conditions. The female applicant in particular was abusing him physically and verbally. On the 7<sup>th</sup> day of **June 2009**, members of the community rescued the child from the applicants and handed him over to the **District Children's Officer** who in turn committed the child to **Child Welfare Society of Kenya** and he was placed in a temporary shelter in Nairobi.

3. After the withdrawal of the child, the applicants sought to be re-united with the child. The applicants were counselled. Their case was reviewed and on the 9<sup>th</sup> **February 2012** they were re-united with the child.

4. On the 10<sup>th</sup> **July 2013** by way of application in court, the applicants sought an order appointing **C M K** as the guardian ad litem. The court having explained to the proposed guardian ad litem her responsibility, appointed her as such.

The court also directed the **Director Children's Services** to carry out a home study and file a report thereto within a prescribed time.

5. By way of **Originating Summons** the applicants also sought to be authorized to adopt the child.

6. On the **26<sup>th</sup> September, 2014** the **County Children's Co-coordinator** visited the home jointly with the **Child Welfare Society of Kenya Makueni Branch** representatives. They found the child having been neglected. He was traumatized following physical and verbal abuse by the applicants. The conditions in which the child lived were abhorable. Consequently the child was withdrawn from the applicants.

7. The child was taken to a temporary shelter and counselled. It was established that he suffered psychological, physical and emotional harm. It was a recommendation of **Child Welfare Society of Kenya** that the child needed psychological support in order to heal.

8. In the meantime the guardian ad litem failed to discharge her duties. She failed to safeguard the interests of the child pending determination of the case. She failed to intervene when the child was being mistreated; and she failed to appraise the court of the trauma the child was being subjected to.

9. The applicants herein were accorded a second chance of proving that they were respectable persons in the society who would provide a good home to the child. They failed to do so. When given an opportunity to address the court (the female applicant) stated that the child was delinquent. She however argued that if the child was not returned to her, she was to be compensated for what she expended on him.

10. The applicants have demonstrated their unsuitability as adoptive parents. The court cannot allow such individuals to adopt a child. The child will continue staying at the temporary shelter until other prospective adoptive parents are identified.

11. In the premises I decline to grant orders sought. Accordingly, the application is dismissed.

12. It is so ordered.

**DATED, SIGNED and DELIVERED at MACHAKOS this 25<sup>TH</sup> day of NOVEMBER, 2014.**

**L.N. MUTENDE**

**JUDGE**